example of such an organization is the United Medical Service, Inc., which began a few years ago to advertise its services to the people of Chicago. Regarding such types of medical practice, the Judicial Council was definite. The Principles of Medical Ethics now contains the following statement:

> It is unprofessional for a physician to dispose of his professional attainments or services to any lay body, organization, group or individual, by whatever name called, or however organized, under terms or conditions which permit a direct profit from the fees, salary or compensation received to accrue to the lay body or individual employing him. Such a procedure is beneath the dignity of professional practice, is unfair competition with the profession at large, is harmful alike to the profession of medicine and the welfare of the people, and is against sound public policy.

As was stated in the introduction to these comments, these modifications of the Principles of Medical Ethics do not in any way modify the basic character of these principles. The Principles of Medical Ethics was established for the protection of the public primarily. Methods of promotion that sell medical practice on the basis of exaggerated claims, on a fee basis rather than the quality of service rendered, methods of practice that break down the intimate personal relationship that must exist between doctor and patient; methods that delegate the responsibility of the attending doctor to a group or a corporation or a business manager, carry with them a menace to the life and health of the people who are served.

Physicians will do well to familiarize themselves with these new statements of principle, now a part of the ethics of organized medicine. The young physician who is tempted by the offer of some commercial agency to enter into such schemes or combinations should bear in mind that he thereby jeopardizes his entire future in the practice of medicine and sacrifices the medical birthright for which he has already paid six or seven years of his life.—*J. Am. M. Ass.*, 1934, **103**: 263.

A doctor who, for want of skill,
Did sometimes cure and sometimes kill;
Contrived at length, by many a puff,
And many a bottle fill'd with stuff,
To raise his fortune and his pride;
And in a coach, forsooth, must ride.
His family coat long since worn out,
What arms to take was all the doubt.
A friend, consulted on the case,
Thus answer'd with a sly grimace:
"Take some device in your own way,
Neither too solemn nor too gay;
Three Ducks, suppose; white, grey or black;
And let your motto be, *Quack! Quack!*"—Graves.

Medico-Legal

V.

Marshall v. Curry*

Nova Scotia—Surgical operation—Surgeon's responsibility—Extension of operation while patient under anæsthetic—Patient's consent—Distinction between action for assault and battery and for negligence or malpractice—Statute of Limitations. [R.S.N.S. 1923, c.238, s.2 (1) (a)]—Nova Scotia Medical Act. [R.S.N.S. 1923, c.113, s.32A, as enacted by 1930 (N.S.), c.34, s.1].

This is an action for damages for negligence and assault in the course of a surgical operation. The judgment, rendered by Chisholm, C. J., in the Nova Scotia Supreme Court, is one of the most important in recent years upon the legal responsibility of the surgeon. Here is discussed in detail, with references to the jurisprudence, the duty of a surgeon who when operating for one condition discovers another which he had not foreseen, but which in his opinion endangers the health or the life of the patient.

The plaintiff alleged that he had employed the defendant to perform an operation for the cure of a hernia, and that, while doing so, and while the plaintiff was under the influence of an anæsthetic, the defendant without his knowledge or consent removed the plaintiff's left testicle. Further it was alleged that the defendant was negligent in diagnosing the case, and in not informing the plaintiff that it might be necessary in treating the hernia to remove the testicle, and finally that in removing the testicle in these circumstances the defendant had committed an assault upon the plaintiff.

As a question of fact the Court found that there had been no express consent by the plaintiff to the removal complained of, that there had been no implied consent in the conversations that took place between the plaintiff and the defendant before the operation, and, finally, that the extended operation was necessary for the health and in the opinion of the defendant reasonably necessary to preserve the plaintiff's life. In these circumstances was the defendant surgeon responsible for the consequences of the extended operation or was he justified in performing it? "It seems to me," said the Court, "that that justification must be found either in an assent implied by the circumstances which arose or in some other principle—broader than and outside of any consent—founded on philanthropic or humanitarian considerations."

Quoting an American case,† the Court laid it down as a general principle of law that "ordinarily, where the patient is in full possession of all his mental faculties and in such physical health as to be able to consult about his condition without the consultation being fraught with

* (1933) 3 D.L.R. 260.

† Pratt *vs.* Davis (1906), 244 Ill. 300 at p. 305.

dangerous consequences to the patient's health, and when no emergency exists making it impracticable to confer with him, it is manifest that his consent should be a prerequisite to a surgical operation". In other words under a free government the first right of a citizen is the right to the inviolability of his person, and the necessary consequence of this right is that a surgeon who has been asked to examine, diagnose, advise, and prescribe for his patient cannot without the patient's permission violate his bodily integrity by a major or capital operation, placing him under an anæsthetic for that purpose, and operating upon him without his consent or knowledge. It is the right of every one to determine what shall be done with his own body.

Practical considerations, however, require that this rule should not be applied too strictly. If a person should be injured and rendered unconscious, and his injuries are of such a nature as to require prompt surgical attention, a medical man would be justified in applying such medical or surgical treatment as might reasonably be necessary for the preservation of his life or limb, without his express consent. Again, if in the course of an operation to which the patient had consented, the medical man should discover conditions not anticipated before the operation was commenced, and which, if not removed, would endanger the life or health of the patient, he would be justified in extending the operation to remove or overcome them, though no express consent to the extension could be given in the nature of things. In such an emergency the surgeon would not be responsible unless the patient had expressly forbidden any extension of the operation.

The juridical basis for holding the surgeon blameless in such cases is sometimes said to be the implied consent that the patient is presumed to have given, sometimes that the operating surgeon is the representative of the patient to give consent. To this the Court said, with much reason, "I am unable to see the force of the opinion, that in cases of emergency, where the patient agrees to a particular operation, and in the prosecution of the operation, a condition is found calling in the patient's interest for a different operation, the patient is said to have made the surgeon his representative to give consent. There is unreality about that view. The idea of appointing such a representative, the necessity for it, the existence of a condition calling for a different operation, are entirely absent from the minds of both patient and surgeon. The will of the patient is not exercised on the point. There is, in reality, no such appointment. I think it is better, instead of resorting to a fiction, to put consent altogether out of the case, where a great emergency which could not be anticipated arises, and to rule that it is the surgeon's duty to act in order to save the life or preserve the health of the patient, and that in the honest execution of that duty he should not be exposed to legal liability."

The further point was raised by the defendant that the plaintiff's action was barred by the Statute of Limitations, which lays down that actions for assault and battery must be commenced "within one year after the cause of such action arises". To this the plaintiff replied that the action was one for negligence and malpractice, and, as such, could be taken anytime within a period of three years under the Nova Scotia Medical Act. The Court held that the present action was one for assault and battery, and, as such, was barred as having been taken outside the yearly period. "The distinction ordinarily between an unauthorized operation amounting to assault and battery on the one hand, and negligence such as would constitute malpractice, on the other, is that the former is intentional, while the latter is unintentional."*

The Court came to the conclusion that the defendant, after he had commenced the operation, discovered conditions that neither he nor the patient had anticipated and which could not have been reasonably foreseen, and that in extending the operation the defendant acted in the interest of his patient and for the protection of his health and possibly his life. "The removal I find was in that sense necessary, and it would be unreasonable to postpone the removal to a later date". For this reason, as well as on the ground that the action was barred under the Statute of Limitations, the action was dismissed.

G.V.V.N.

* Hershey *vs.* Peake (1924), 115 Kan. 562.

Abstracts from Current Literature

Medicine

Septicæmia. Kolmer, J. A., *Ann. Int. Med.*, 1934, **8**: 612.

Early bacteriological examination of the primary focus of infection is important. Septicæmia may be first detected by a positive blood culture; the absence of classical symptoms and signs by no means excludes a blood stream infection. Whenever possible, the blood for culture should be taken from a vein draining the infected area. Leucocyte counts should be made at frequent interavls. An increase in the immature polymorphonuclears, designated by Schilling as a "shift to the left", may occur with but slight and insignificant increase in the total count, yet affords valuable information as to the severity and progress of the infection. Adequate surgical drainage of foci of infection in the fixed tissues is of fundamental importance in treatment. In hæmolytic streptococcus infec-